

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 67, “Administration,” and Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

The proposed amendments are necessary to reflect the enactment of 2013 Iowa Acts, House File 640, sections 6, 7, 11 and 12, which amended Iowa Code sections 452A.2 and 452A.3 and added new Iowa Code section 452A.6A, and to clarify existing rules.

Item 1 amends subrule 10.71(1) to add an explanation of how the penalty rule applies when multiple vehicles in violation of the rule are discovered during one inspection.

Item 2 adopts new subrule 10.71(8) to explain the penalty and enforcement for violations of a distributor’s or dealer’s right to blend certain fuel types. This subrule is necessary following the enactment of 2013 Iowa Acts, House File 640.

Item 3 amends the implementation sentence of rule 701—10.71(452A).

Item 4 amends rule 701—67.1(452A) to add definitions to reflect the enactment of 2013 Iowa Acts, House File 640. A definition of “ethanol distribution percentage” has also been added.

Item 5 amends the implementation sentence of rule 701—67.1(452A).

Item 6 amends subrules 68.2(1) and 68.2(2). These amendments are necessary to reflect the extension of the variable tax rate on gasoline following the enactment of 2013 Iowa Acts, House File 640, sections 11 and 12. Clarifications related to the ethanol distribution percentage have also been added.

Item 7 amends the implementation sentence of rule 701—68.2(452A).

Item 8 adopts new rule 701—68.19(452A). This rule is necessary following the enactment of 2013 Iowa Acts, House File 640.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than April 7, 2014, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to idrpolicy@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 25, 2014. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 14457, Des Moines, Iowa 50306. Electronic submissions may be directed to Alana Stamas at idrpolicy@iowa.gov.

Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 25, 2014.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 452A.2, 452A.3 and 452A.6A and 2013 Iowa Acts, chapter 127.

The following amendments are proposed.

ITEM 1. Amend subrule 10.71(1) as follows:

10.71(1) *Illegal use of dyed fuel.*

a. The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

~~a.~~ (1) A \$500 penalty for the first violation.

~~b.~~ (2) A \$1,000 penalty for a second violation within three years of the first violation.

~~c.~~ (3) A \$2,000 penalty for third and subsequent violations within three years of the first violation.

b. For the purposes of this subrule, if multiple vehicles are discovered to be in violation of this subrule during one inspection, each vehicle is considered a separate first violation. For example, if three vehicles are discovered to be in violation during one inspection, the result is three \$500 penalties or \$1,500. On the other hand, if three vehicles owned by the same taxpayer are discovered to be in violation during three separate inspections, the first inspection would result in a \$500 penalty, the second inspection would result in a \$1,000 penalty, and the third inspection would result in a \$2,000 penalty. If one vehicle is discovered to be in violation during the first inspection, resulting in a \$500 penalty, but two vehicles are discovered to be in violation in a second inspection, the result of the second inspection would be two \$1,000 penalties, or \$2,000 total.

ITEM 2. Adopt the following **new** subrule 10.71(8):

10.71(8) *Violation of a distributor's and dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel.* A refiner, supplier, terminal operator, or terminal owner, as defined in Iowa Code section 452A.2, who violates a distributor's or dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel, as described in Iowa Code section 452A.6A, is subject to a civil penalty.

a. Suspected violations should be reported to the motor fuel examination section of the department. Supporting documentation should be provided.

b. The department will investigate to determine whether a violation has occurred.

c. If the department determines that a violation has occurred, a civil penalty of \$10,000 per violation will be assessed against the violator. Each day that a violation continues is a separate violation.

For more information on the blending rights of distributors and dealers, see 701—68.19(452A).

ITEM 3. Amend rule **701—10.71(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 452A.2, 452A.6A and 452A.74A as amended by 2009 Iowa Acts, Senate File 478, section 141.

ITEM 4. Adopt the following **new** definitions in rule **701—67.1(452A)**:

“Conventional blendstock for oxygenate blending” means one or more motor fuel components intended for blending with an oxygenate or oxygenates to produce gasoline.

“Diesel fuel” or *“diesel”* means diesel as defined in Iowa Code section 214A.1.

“Ethanol distribution percentage” means the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state during the determination period. The determination period is the previous calendar year.

“Nonrefiner biofuel manufacturer” means an entity that produces, manufactures, or refines biofuel and does not directly or through a related entity refine, blend, import, or produce a conventional blendstock for oxygenate blending, gasoline, or diesel fuel.

“*Refiner*” means a person engaged in the refining of crude oil to produce motor fuel or special fuel, and includes any affiliate of such person.

“*Terminal owner*” means a person who holds a legal or equitable interest in a terminal.

ITEM 5. Amend rule **701—67.1(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 452A.2 and 452A.59 as amended by 2008 Iowa Acts, Senate File 2400.

ITEM 6. Amend subrules 68.2(1) and 68.2(2) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

| | |
|------------------------------------------------|--------------------------------------------------------------------------|
| Gasoline | 20.3¢ per gallon (for July 1, 2003, through June 30, 2004) |
| | 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) |
| | 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) |
| | 21¢ per gallon (for July 1, 2006, through June 30, 2007) |
| | 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) |
| | 21¢ per gallon (for July 1, 2008, through June 30, 2010 2014) |
| LPG | 20¢ per gallon |
| Ethanol blended gasoline | 19¢ per gallon (for July 1, 2003, through June 30, 2010 2014) |
| E-85 gasoline | 17¢ per gallon beginning January 1, 2006, through June 30, 2007 |
| | 19¢ per gallon (for July 1, 2007, through June 30, 2010 2014) |
| Aviation gasoline | 8¢ per gallon |
| Special fuel (<u>biodiesel, diesel, LNG</u>) | 22.5¢ per gallon |
| Special fuel (aircraft) | 3¢ per gallon |
| CNG | 16¢ per 100 cu. ft. |

68.2(2) Except as otherwise provided in this subrule, until June 30, ~~2013~~ 2014, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the ethanol distribution percentage. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. ~~Aviation gasoline shall not be used, beginning calendar year January 1, 2009, in determining the percentage basis for the tax rates effective July 1, 2010, and after.~~ The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

| Ethanol <u>Distribution</u> % | Ethanol Tax | Gasoline Tax |
|-------------------------------|-------------|--------------|
| 00/50 | 19.0 | 20.0 |
| 50+/55 | 19.0 | 20.1 |
| 55+/60 | 19.0 | 20.3 |
| 60+/65 | 19.0 | 20.5 |
| 65+/70 | 19.0 | 20.7 |
| 70+/75 | 19.0 | 21.0 |
| 75+/80 | 19.3 | 20.8 |
| 80+/85 | 19.5 | 20.7 |
| 85+/90 | 19.7 | 20.4 |
| 90+/95 | 19.9 | 20.1 |
| 95+/100 | 20.0 | 20.0 |

Except as otherwise provided in this subrule, after June 30, ~~2013~~ 2014, an excise tax of 20 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

ITEM 7. Amend rule **701—68.2(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section sections 452A.3 as amended by 2012 Iowa Acts, House File 2472, and sections 452A.8 and 452A.85.

ITEM 8. Adopt the following new rule 701—68.19(452A):

701—68.19(452A) Right of distributors and dealers to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel using a biofuel.

68.19(1) A dealer or distributor may blend a conventional blendstock for oxygenate blending, gasoline, or diesel fuel using the appropriate biofuel, or sell unblended or blended gasoline or diesel fuel on any premises in this state. This subrule does not apply to the extent that the use of the premises is restricted by federal, state, or local law.

68.19(2) A refiner, supplier, terminal operator, or terminal owner who in the ordinary course of business sells or transports a conventional blendstock for oxygenate blending, gasoline unblended or blended with a biofuel, or diesel fuel unblended or blended with a biofuel shall not refuse to sell or transport to a distributor or dealer any conventional blendstock for oxygenate blending, unblended gasoline, or unblended diesel fuel that is at the terminal, based on the distributor’s or dealer’s intent to use the conventional blendstock for oxygenate blending, or blend the gasoline or diesel fuel with a biofuel.

68.19(3) This rule shall not be construed to do any of the following:

a. Prohibit a distributor or dealer from purchasing, selling or transporting a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

b. Affect the blender’s license requirements under Iowa Code section 452A.6.

c. Prohibit a dealer or distributor from leaving a terminal with a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

d. Require a nonrefiner biofuel manufacturer to offer or sell a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

68.19(4) A refiner, supplier, terminal operator, or terminal owner who violates this rule is subject to a civil penalty of not more than \$10,000 per violation. Each day that a violation continues is deemed a separate offense. For more information on enforcement of this penalty, see 701—subrule 10.71(8).

This rule is intended to implement Iowa Code section 452A.6A.